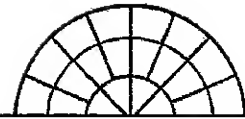


CONNELLY LAW OFFICES, PLLC



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September 18, 2019

Reply to Tacoma Office:
2301 North 30th Street
Tacoma, WA 98403

Seattle Office:
Smith Tower
506 2nd Ave, 33rd Floor
Seattle, WA 98104

Toll Free: (855) 593-5100
Tacoma: (253) 593-5100
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Via Hand Delivery

City Hall
600 Fourth Avenue, 3rd Floor
Seattle, Washington

RE: *Gifford v. City of Seattle*

Dear City Hall:

Greetings, I represent Timothy Gifford and family, including his wife Megan and young children. In that regard, attached please find a Tort Claim filed on behalf of Mr. Gifford, and his entire family. Please direct all future contact through my office.

Very truly yours,

Lincoln C. Beauregard

Lincoln C. Beauregard

Enclosure:
Tort Claim Form
Complaint for Damages (pre-filing)



City of Seattle CLAIM FOR DAMAGES

CITY USE ONLY	
CLAIM NUMBER	
DATE FILED	

Note:
Type or Print Legibly.
See instructions on back.

CLAIMANT		NAME (FIRST - MIDDLE - LAST, OR BUSINESS NAME) Timothy Gifford (and family)	DATE OF BIRTH private	
CURRENT HOME ADDRESS (NUMBER - STREET - CITY - STATE - ZIP) c/o Connelly Law Offices			BUS. PHONE same	
HOME ADDRESS AT THE TIME THE CLAIM AROSE (NUMBER - STREET - CITY - STATE - ZIP) 2301 N 30th St., Tacoma, WA 98403			CELL PHONE same	E-MAIL ADDRESS C/O LINCOLNB@CONNELLY-LAW.CG
ACCIDENT/LOSS	DATE JAN 8, 2019	TIME	DIAGRAM Use if this will help you locate or describe what happened	
LOCATION/SITE	BE VERY SPECIFIC: STREETS, ADDRESSES, etc. See Attached Complaint for Damages			
WHAT HAPPENED?	DESCRIBE IN YOUR OWN WORDS HOW THIS LOSS OCCURRED AND WHY YOU BELIEVE THE CITY IS RESPONSIBLE. (additional space on reverse side or attach additional pages and supportive documents as needed) See Attached Complaint for Damages			
NAMES, ADDRESSES, AND PHONE NUMBERS OF ALL PERSONS INVOLVED IN OR WITNESS TO THIS INCIDENT				CITY DEPT?
1) See Attached 2) 3)				CITY EMPLOYEE
Ph: Ph: Ph:				CITY VEHICLE NUMBER, LICENSE, etc.
WAS YOUR PROPERTY DAMAGED? (i.e. Home, Auto, Personal Property) <input checked="" type="checkbox"/> YES IF SO, THEN FULLY DESCRIBE - SUCH AS AGE, MAKE, MODEL, CONDITION, VALUE, OR EXTENT OF DAMAGE <input type="checkbox"/> NO (additional space on reverse side or attach additional pages and supportive documents as needed) See Attached				
WERE YOU INJURED? <input checked="" type="checkbox"/> YES IF YES, THEN COMPLETE THE FOLLOWING: <input type="checkbox"/> NO (additional space on reverse side or attach additional pages and supportive documents as needed) DESCRIBE YOUR INJURY (IDENTIFY YOUR DOCTOR(S)) See Attached				
WAGE LOSS <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, THEN RATE OF PAY: TBD KIND OF WORK Police Officer EMPLOYER City of Seattle				
AMOUNT CLAIMED (if known)		\$ 10,000,000		
SIGNATURE OF CLAIMANT (AND TITLE, IF A BUSINESS)		I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct		
<div>This claim form must be signed by the Claimant, verifying the claim; or pursuant to a written power of attorney, by the attorney in fact for the claimant; or by an attorney admitted to practice in Washington State on the claimant's behalf; or by a court-approved guardian or guardian ad litem on behalf of the claimant.</div>		EXECUTED this 16 day of September 19 ,		
		At Seattle Washington County, Washington		

1
2
3
4
5
6
7
8 SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR KING COUNTY

10 TIMOTHY GIFFORD, an individual,

11 Plaintiff,

12 v.

13 CITY OF SEATTLE, a municipal corporation,

14 Defendant.

NO.

**COMPLAINT FOR DAMAGES:
FAILURE TO PREVENT TOXIC
EXPOSURE AT HOMELESS
ENCAMPMENT**

15 COMES NOW the Plaintiff, by and through his attorneys of record, and by way of claim
16 allege, and upon information and belief upon all other matters, as follows:

17 I. PARTIES

18 1. Plaintiff Timothy Gifford is a 38-year-old adult male and a commissioned police
19 officer (in excellent standing) employed by the Seattle Police Department.

20 2. Defendant City of Seattle is a municipal entity responsible for the oversight,
21 management, and operation of the Seattle Police Department.
22
23
24
25
26

COMPLAINT: FAILURE TO PREVENT TOXIC EXPOSURE AT
HOMELESS ENCAMPMENT - 1 of 12

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Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

II. FACTS

3. On or about January 8, 2019, Officer Gifford was assigned to participate in the cleanup of a homeless encampment located in SODO, in proximity to 1st Avenue South and Denver Street South:

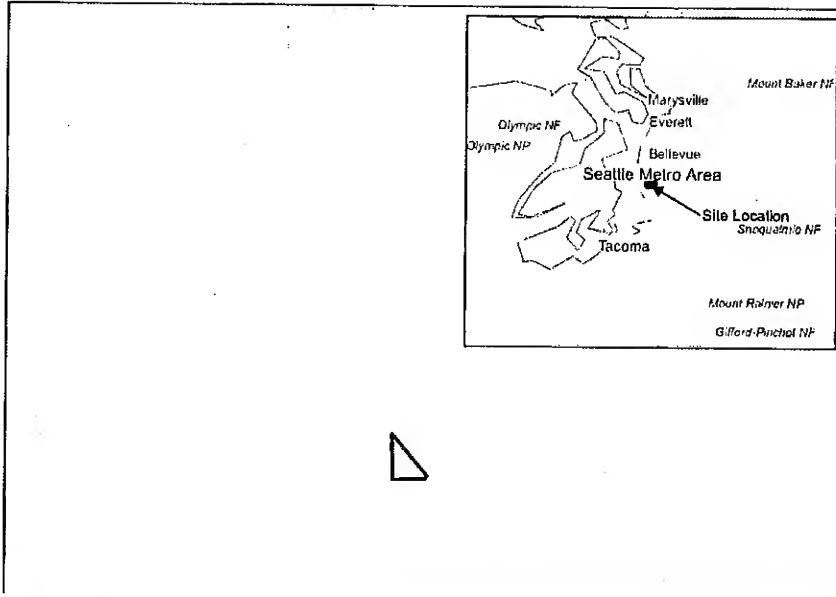
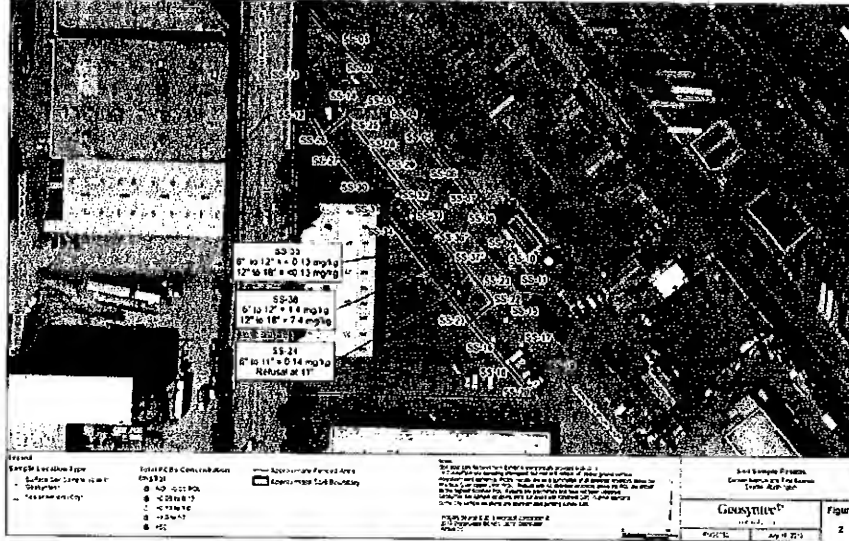


Figure 1. Geosyntec collected soil sampling results map



COMPLAINT: FAILURE TO PREVENT TOXIC EXPOSURE AT HOMELESS ENCAMPMENT - 2 of 12

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1 Unbeknownst to Officer Gifford, the homeless encampment site was contaminated with an
2 extremely dangerous man made toxin known as PCBs.

3 4. PCBs are a class of man-made chemicals that are commonly found in the
4 environment due to their historical use. Although PCBs are generally considered to be odorless
5 (e.g., ATSDR 2000), some people and a detection dog used in the pilot study appear to be able
6 to smell PCBs. Exposure to PCBs poses risks to human health and the environment; the US
7 Environmental Protection Agency (EPA) banned the production of PCBs in the United States
8 in 1977 (ATSDR 2000). Before that time, PCBs were commonly used in electrical equipment,
9 such as transformers and capacitors. PCBs have also historically been used as plasticizers; in
10 hydraulic fluid, cutting oils, other lubricants, carbonless copy paper, wire insulation, inks, and
11 dyes; and as petroleum additives (Leidos 2016).

12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
5. In the Lower Duwamish Waterway (LDW), PCBs are one of the primary
contaminants of concern, and specific sources of PCBs that have been identified in the LDW
include transformer oil, exterior building paint, and caulk. In addition, the inadvertent
production of PCBs in certain pigments and dyes is an ongoing source of certain PCBs (Ecology
2016b).

6. PCBs have been commonly detected in samples collected from within the City's
drainage system, although rarely at concentrations greater than source tracing screening levels
(1ppm), and are one of the contaminants identified as a risk driver for human and ecological
health in the LDW. Storm drain solids tend to accumulate in low-energy areas of the drainage
system (e.g., maintenance holes, vaults, and areas affected by tidal backwater from the
waterway).

1 7. On June 5, 2019 SPU Source Control Inspector Michael Jeffers was driving
2 through the industrial area of south Seattle in the Lower Duwamish Waterway drainage area.
3 He noticed a strong smell of PCBs in the air as he drove east on Denver Ave S and stopped the
4 car to investigate. He had previously worked in the private industry identifying and managing
5 PCBs for disposal and recently participated in the PCB detection dog study conducted between
6 SPU and the University of Washington Conservation Canines. These prior experiences had
7 made Inspector Jeffers sensitive to identifying PCBs by odor at low levels. He changed his
8 work plans for the day and gathered supplies to take samples of the roadway shoulder right-of-
9 way (ROW) and adjacent stormwater inlet and catch basin for PCB analysis. Samples were
10 submitted to the lab the same day.

11
12 8. On June 17, 2019 Inspector Jeffers returned to the area to investigate the site
13 further. The smell was unmistakable and overpowering, making him suspect a serious
14 environmental concern at this site. Inspector Jeffers notified SDOT by email that he had taken
15 samples of this area and was fairly certain the results would come back high so they should be
16 prepared for a cleanup at this location.

17
18 9. On June 19, 2019 sample analytical results came back for the ROW and
19 stormwater structures taken on June 5, 2019. The ROW sample had PCB level of 40,300 ppm,
20 well above our level of concern of 1 ppm:
21

Analyte	CAS Number	Dilution	Detection Limit	Reporting Limit	Result	Units	Notes
Aroclor 1242	53469-21-9	5000	194000	4070000	40300000	ug/kg	D

22 In addition, the stormwater inlet had 6,970 ppm PCBs and the catch basin solids were at 69ppm.

23 SPU notified the Washington State Department of Ecology, Environmental Protection Agency

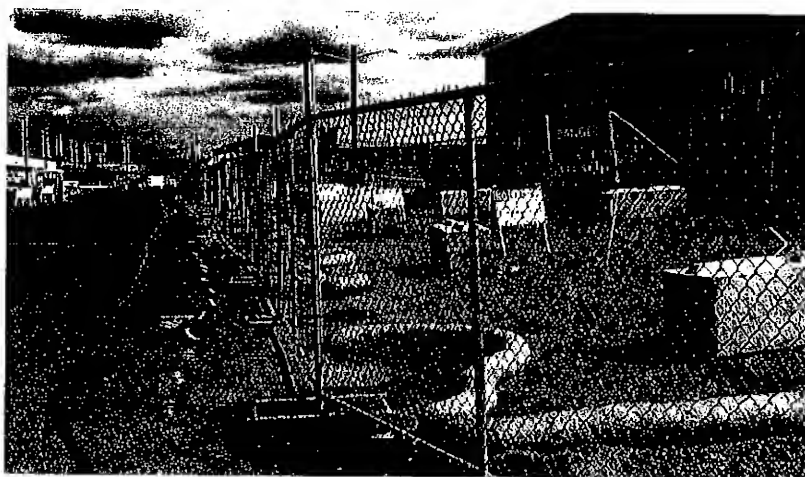
24 COMPLAINT: FAILURE TO PREVENT TOXIC EXPOSURE AT
25 HOMELESS ENCAMPMENT - 4 of 12

26
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1 Regional PCB office, and a confirmation was sent to SDOT to inform them of the level of
2 contamination and that immediate action was going to be needed and that we would team up to
3 find the source as well as isolate and clean the site.

4 10. On June 20, 2019, Inspector Jeffers and a SDOT Sr Environmental Analyst,
5 Craig Dahl, met on site to discuss scope of the problem. SDOT placed plastic sheeting over the
6 suspected hot spot to isolate it from stormwater impact and secured the area with caution tape
7 and warning signs:
8



17 11. SDOT took more soil samples to confirm extent along the roadway. SPU took
18 additional samples in the street gutter to see if PCBs were spreading out from the hot spot in
19 other directions. A contractor was called in to provide emergency cleanup estimates for surface
20 cleanup as well as in the City drainage system.
21

22 12. According to internal documents that have not been released to the general
23 public, it is believed that at least 59 employees of the City of Seattle were exposed to the PCBs
24 at the homeless encampment:
25
26

1 **How many people are affected?**

2 We have identified 59 City employees who may have been exposed to PCBs. We are
3 recommending that employees contact a medical professional to determine next steps.

4 According to those internal documents, the City of Seattle informed select employees, including
5 Officer Gifford, that they had been exposed:

6 Diaz, Adrian

7 Tue 7/2/2019 8:35 AM

8 To: Phillips, Wesley <Wesley.Phillips@seattle.gov>; Devore, Bradley <Bradley.Devore@seattle.gov>; Gifford, Timothy
9 <Timothy.Gifford@seattle.gov>; Newburn, Tori <Tori.Newburn@seattle.gov>; Howard, April <April.Howard@seattle.gov>;
10 Coe, Sarah <Sarah.Coe@seattle.gov>; Ng, Shari <Shari.Ng@seattle.gov>; Vandyke, Kelly <Kelly.Vandyke@seattle.gov>;
11 Ebinger, Sina <Sina.Ebinger@seattle.gov>; Pfaff, Tawnia <Tawnia.Pfaff@seattle.gov>; Zerr, Eric <Eric.Zerr@seattle.gov>;
12 Gallegos, Mark <Mark.Gallegos@seattle.gov>; Toman, Christopher <Christopher.Toman@seattle.gov>;

13 Importance: High

14 Hello All,

15 Recently, SPU identified an area of soil contamination at 1st Ave S and S Denver St. Testing confirmed the
16 presence of polychlorinated biphenyls (PCBs). It is unknown how long the contamination has been present.

17 You are receiving this email because you were identified as a participant in the January 8th remediation. In an
18 abundance of caution, I am writing to ask that, if you have reason to believe that you may have been in this
19 area, you contact Lt. Sina Ebinger, who is working with King County Public Health and other City departments to
20 determine the level of risk and next steps in the event of an exposure.

21 As you know, we routinely work in situations involving hazardous materials, and as we do in other situations,
22 will work with our Safety Officer, Human Resources, and Public Health to identify preventative measures to limit
23 these types of events.

24 Sincerely,

25 Adrian Z. Diaz
26 Assistant Chief – Collaborative Policing Bureau
27 Seattle Police Department
28 610 5th Ave.
29 Seattle, WA 98124-4986
30 Desk: 206-684-0197
31 Cel: 206-992-0662
32 adrian.diaz@seattle.gov

33 13. Officer Gifford had already been feeling inexpciably ill, and sought medical
34 treatment to determine the cause. According to Officer Gifford's medical providers, he was
35 COMPLAINT: FAILURE TO PREVENT TOXIC EXPOSURE AT
36 HOMELESS ENCAMPMENT - 6 of 12

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1 diagnosed with the otherwise inexplicable onset of Diabetes Type II. As of the time of
2 diagnosis, Officer Gifford was in good health, at 6'2" and weighing only 159lbs

3 14. Medical research has confirmed the connection between PCB exposure and the
4 onset of diabetes:
5

6 **Polychlorinated Biphenyl (PCB) Exposure and Diabetes:**
7 **Results from the Anniston Community Health Survey**

8 Allen E. Silverstone,¹ Paula F. Rosenbaum,¹ Ruth S. Weinstock,^{1,2} Scott M.
9 Bartell,³ Herman R. Foushee,⁴ Christie Shelton,⁵ Marian Pavuk,⁶ and for the Anniston
Environmental Health Research Consortium

10 ***

11 Background: Polychlorinated biphenyls (PCBs) manufactured in Anniston,
12 Alabama, from 1929 to 1971 caused significant environmental contamination.
The Anniston population remains one of the most highly exposed in the world.

13 Objectives: Reports of increased diabetes in PCB-exposed populations led us to
14 examine possible associations in Anniston residents.

15 Methods: Volunteers ($n = 774$) from a cross-sectional study of randomly
16 selected households and adults who completed the Anniston Community Health
17 Survey also underwent measurements of height, weight, fasting glucose, lipid,
18 and PCB congener levels and verification of medications. Odds ratios (ORs) and
95% confidence intervals (CIs) were calculated to assess the relationships
between PCBs and diabetes, adjusting for diabetes risk factors. Participants with
prediabetes were excluded from the logistic regression analyses.

19 Results: Participants were 47% African American, 70% female, with a mean age
of 54.8 years. The prevalence of diabetes was 27% in the study population,
corresponding to an estimated prevalence of 16% for Anniston overall; the PCB
body burden of 35 major congeners ranged from 0.11 to 170.42 ppb, wet weight.
The adjusted OR comparing the prevalence of diabetes in the fifth versus first
quintile of serum PCB was 2.78 (95% CI: 1.00, 7.73), with similar associations
estimated for second through fourth quintiles. In participants < 55 years of age,
the adjusted OR for diabetes for the highest versus lowest quintile was 4.78 (95%
CI: 1.11, 20.6), whereas in those ≥ 55 years of age, we observed no significant
associations with PCBs. Elevated diabetes prevalence was observed with a 1 SD
increase in log PCB levels in women (OR = 1.52; 95% CI: 1.01, 2.28); a
decreased prevalence was observed in men (OR = 0.68; 95% CI: 0.33, 1.41).

1 **Conclusions: We observed significant associations between elevated PCB**
2 **levels and diabetes mostly due to associations in women and in individuals**
3 **< 55 years of age.¹**

4 The available medical information confirms that Officer Gifford suffers from conditions relates
5 to exposures to the PCBs from the homeless encampment:

6 **ASSESSMENT:**
7 **(T75.89XA) Environmental exposure (primary encounter diagnosis)**

8 **Causation:**
9 **The condition is work-related on a more-probable-than-not basis.**

10 15. Officer Gifford is in need of supportive care as a result of the PCB exposure.
11 On July 18, 2019, Officer Gifford filed a workers compensation related complaint with the City
12 of Seattle. Thur far, Officer Gifford's claim has been denied and delayed in a sea of
13 bureau tratic red tape. In this way, the City of Seattle is failing Officer Gifford, and likely other
14 exposed individuals, and failing to protect the health of the front line officers serving this
15 community during the time of the ongoing homesless crisis.

16
17 **III. NEGLIGENCE; PUBLIC/PRIVATE NUISANCE; & FAILURE OF CARE FOR**
18 **OFFICER GIFFORD'S HEALTH PROBLEMS DERIVED WHEN ACTING AS A**
19 **PROTECTORATE OF THE COMMUNITY**

20 16. Overall, the City of Seattle caused the injuries to Officer Gifford by allowing
21 the homeless encampment to exist in the first place thereby creating a dangerous nuisance to
22 the community. Further, the City of Seattle put Officer Gifford in harms way but assigning him
23 to participate in the cleaup of a homeless encampment without providing proper safety
24

25
26 ¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3346783/>

1 protocols during that process. According to an internal report, those protocols include, but are
2 not limited to, the following:



3 **Seattle**
4 **Public**
5 **Utilities**

6 Date: 8/22/2019

7 To: Ellen Stewart

8 From: Tim Carter

9 Re: 1st Ave S & Denver Ave site PCB exposure analysis

10 ***

11 Steps can be taken to reduce exposure when working or responding to locations contaminated
12 with hazardous materials:

- 13 • Use universal precautions.
- 14 • Use gloves when handling tools or materials in areas with suspected contaminants.
- 15 • Avoid creating dust. If dry soil or other dry material needs to be moved or disturbed,
16 consider dampening the material when possible.
- 17 • Do not dry sweep. Damp sweep or use a shovel instead of a broom. Road dust can contain
18 other environmental contaminants beside PCB, like PAHs, crystalline silica and lead.
- 19 • Wash hands and face (and other areas of exposed skin) after exiting the site or before
20 eating. Soap and water effectively remove many contaminants (including PCB).
- 21 • Clean boots when exiting known contaminated sites or as soon as possible afterward.
- 22 • Decon contaminated tools and PPE with soap and water.
- 23 • Any other procedures as stipulated in health and safety plans.

24 17. Prior to the cleanup, appropriate site evaluation and testing never occurred. It is
25 suspected that a homeless resident may have caused the PCB exposure when tampering with
26 proximal electrical equipment. Officer Gifford was neither warned or trained of the associated
hazards or issued appropriate protective gear. Officer Gifford recalls keeping contaminated
boots in his patrol vehicle for months after the site cleanup.

18 18. What's worse is that the City of Seattle is well aware of an ongoing PCB
19 contamination issue in the Duawamish River region. The City of Seattle is actively suing the

1 sole producer of PCBs, the Monsanto Company, in federal court under Cause Number 16-CV-
2 00107. The contamination is widespread throughout the region:

3 87. PCBs are the most widespread contaminant in Lower Duwamish sediment, found in
4 94% of the surface sediment locations sampled for PCBs and 48% of the subsurface sediment
5 samples.⁴⁶

6 88. The Washington State Department of Health advises "no consumption of resident fish
7 and shellfish from the LDW,"⁴⁷ due to elevated PCB levels.

8 89. The City has participated in cleanups of PCB-contaminated sediment from the Lower
9 Duwamish Waterway.⁴⁸

10 90. PCB was also detected in almost all samples of fish, shellfish, and benthic invertebrate
11 tissues.⁴⁹ EPA identified PCBs as presenting a human health risk for individuals engaged in
12 netfishing, clamming, and beach play.⁵⁰

13 The allegations in the federal lawsuit, which was filed on January 1, 2016, expressly
14 acknowledge the grave dangers posed by the PCBs which have contaminated:

15 50. PCBs may also disrupt the normal function of the endocrine system. PCBs have been
16 shown to affect thyroid hormone levels in both animals and humans. In animals, decreased thyroid
17 hormone levels have resulted in developmental deficits, including deficits in hearing. PCB exposures
18 have also been associated with changes in thyroid hormone levels in infants in studies conducted in the
19 Netherlands and Japan.

20 51. PCBs have been associated with other health effects including elevated blood pressure,
21 serum triglyceride, and serum cholesterol in humans; dermal and ocular effects in monkeys and
22 humans; and liver toxicity in rodents.
23
24
25
26

1 53. PCBs are known to be toxic to a number of aquatic species and wildlife including fish,
2 marine mammals, reptiles, amphibians, and birds. Exposure is associated with death, compromised
3 immune system function, adverse effects on reproduction, development, and endocrine function. PCB
4 exposure affects liver function, the digestive system, and nervous systems and can promote cancer in a
5 number of animal species. The presence of PCBs can cause changes in community and ecosystem
6 structure and function.⁹

7 19. In these ways, the City of Seattle was negligent by dispatching Officer Gifford
8 to participate in the cleanup of the homeless encampment at issue. The City of Seattle was
9 further negligent in failing to streamline Officer Gifford's access to medical support and care
10 during this time of crisis. Absent providing the proper care and support to our frontline officers,
11 such as Officer Gifford and the other 59 exposed employees, the City of Seattle will continue
12 to fail in the duty to protect our community at large.

13 IV. PRAYER FOR RELIEF

14 WHEREFORE, Plaintiff requests a judgment against Defendant:

- 15 (a) Awarding Plaintiff general damages and special damages in an amount to be
16 proven at trial;
17 (b) Awarding him reasonable attorney's fees and costs as available under law;
18 (c) Awarding him any and all applicable interest on the judgment; and
19 (d) Awarding him such other and further relief as the Court deems just and proper
20 under the circumstances of this case.
21
22
23
24
25
26

1 Respectfully submitted this 16th day of September, 2019.

2 CONNELLY LAW OFFICES, PLLC

3 *Lincoln Beauregard*

4 By

5 Lincoln C. Beauregard, WSBA No. 32878
6 Attorneys for Plaintiff